

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HTC AMERICA, INC., a Washington)	
corporation, HTC CORPORATION, a)	
Taiwanese corporation, and EXEDEA)	
INC., a Texas corporation,)	No. 2:11-cv-908
)	
Plaintiffs,)	SOFTVIEW LLC'S ANSWER AND
)	COUNTERCLAIMS TO COMPLAINT
v.)	FOR DECLARATORY RELIEF
)	
SOFTVIEW LLC, a Washington limited)	JURY TRIAL DEMANDED
liability company,)	
)	
Defendant.)	
)	

Defendant and Counterclaimant SoftView LLC ("SoftView"), by and through its undersigned counsel, answers the Complaint for Declaratory Relief filed by Plaintiffs and Counterdefendants HTC America, Inc., HTC Corporation, and Exedea, Inc. (collectively, "HTC") and asserts counterclaims as follows:

THE PARTIES

1. On information and belief, SoftView admits that HTC America, Inc. is a wholly-owned subsidiary of HTC Corporation with its principal place of business at 13920 S.E. Eastgate Way, Suite 400, Bellevue, Washington 98005. SoftView is without knowledge or information

1 sufficient to form a belief as to the truth or falsity of the remaining allegations contained in
2 paragraph 1 of the Complaint, and therefore denies these allegations.

3 2. On information and belief, SoftView admits the allegations in paragraph 2.

4 3. On information and belief, SoftView admits the allegations in paragraph 3.

5 4. SoftView admits the allegations in paragraph 4.

6 **NATURE OF THE ACTION**

7 5. SoftView admits that HTC purports to assert a declaratory judgment action
8 against SoftView seeking a determination that HTC does not infringe any claim of U.S. Patent
9 Nos. 7,461,353 (the "353 patent") or 7,831,926 (the "926 patent") under 35 U.S.C. § 271, and a
10 determination that these patents are invalid under 35 U.S.C. §§ 102, 103, and 112. To the extent
11 not expressly admitted here, SoftView denies the allegations in paragraph 5 and denies that HTC
12 is entitled to any of the relief that it seeks.

13 6. SoftView admits the allegations in paragraph 6.

14 7. SoftView admits the allegations in paragraph 7.

15 **JURISDICTION AND VENUE**

16 8. SoftView does not contest personal jurisdiction in this Court for the purposes of
17 this action.

18 9. SoftView admits the allegations in paragraph 9.

19 10. In response to the allegations in paragraph 10 and its reference to allegations "as
20 alleged more fully below," SoftView incorporates its responses to allegations below.

21 11. SoftView admits the allegations in paragraph 11.

22 12. SoftView admits the allegations in paragraph 12.

23 **FACTUAL BACKGROUND**

24 13. In response to the allegations in paragraph 13, SoftView incorporates its
25 responses to paragraphs 1-12 set forth above as if fully set forth herein.
26

1 14. SoftView is without knowledge or information sufficient to form a belief as to the
2 truth or falsity of the allegations contained in paragraph 14, and therefore denies these
3 allegations.

4 15. SoftView admits that it is the plaintiff in a patent litigation lawsuit pending in the
5 District of Delaware. SoftView admits that it has petitioned the Delaware court for leave to
6 amend its complaint to add HTC and other parties as new defendants who infringe the '353 and
7 '926 patents. SoftView admits that its motion for leave to amend is still pending. To the extent
8 not expressly admitted here, SoftView denies the allegations in paragraph 15.

9 16. SoftView is without knowledge or information sufficient to form a belief as to the
10 truth or falsity of the allegations contained in paragraph 16 of the Complaint, and therefore
11 denies these allegations.

12 17. SoftView admits that its proposed second amended complaint alleges that HTC
13 has infringed and continues to infringe the '353 and '926 patents by making, using, offering to
14 sell or selling devices having the Android Operating System and a web browser, including but
15 not limiting to devices sold under the trade names Aria, Desire, Dream, Eris, EVO, Hero,
16 Incredible, Inspire, G1, G2, Legend, Magic, MyTouch, Nexus, Tattoo, Thunderbolt, Shift, and
17 Wildfire (the "Accused Products"). To the extent not expressly admitted here, SoftView denies
18 the allegations in paragraph 17.

19 18. SoftView admits the allegations in paragraph 18.

20 19. On information and belief, SoftView admits the allegations in paragraph 19.

21 20. SoftView denies the allegations in paragraph 20.

22 **FIRST CAUSE OF ACTION**

23 **(DECLARATORY JUDGMENT OF NON-INFRINGEMENT ('353 PATENT))**

24 21. In response to the allegations in paragraph 21, SoftView incorporates its
25 responses to paragraphs 1-20 set forth above as if fully set forth herein.

26 22. SoftView denies the allegations in paragraph 22.

23. SoftView admits the allegations in paragraph 23.

24. SoftView admits that a valid and justiciable controversy has arisen and exists between HTC and SoftView relating to the infringement of the '353 patent. SoftView admits that HTC purports to desire a judicial determination and declaration of the respective rights and duties of the parties herein. To the extent not expressly admitted here, SoftView denies the allegations in paragraph 24 and denies that HTC is entitled to any of the relief that it seeks.

SECOND CAUSE OF ACTION

(DECLARATORY JUDGMENT OF NON-INFRINGEMENT ('926 PATENT))

25. In response to the allegations in paragraph 25, SoftView incorporates its responses to paragraphs 1-24 set forth above as if fully set forth herein.

26. SoftView denies the allegations in paragraph 26.

27. SoftView admits the allegations in paragraph 27.

28. SoftView admits that a valid and justiciable controversy has arisen and exists between HTC and SoftView relating to the infringement of the '926 patent. SoftView admits that HTC purports to desire a judicial determination and declaration of the respective rights and duties of the parties herein. To the extent not expressly admitted here, SoftView denies the allegations in paragraph 28 and denies that HTC is entitled to any of the relief that it seeks.

THIRD CAUSE OF ACTION

(DECLARATORY JUDGMENT OF INVALIDITY ('353 PATENT))

29. In response to the allegations in paragraph 29, SoftView incorporates its responses to paragraphs 1-28 set forth above as if fully set forth herein.

30. SoftView admits that HTC purports to believe that the claims of the '353 patent are invalid. To the extent not expressly admitted here, SoftView denies the allegations in paragraph 30.

31. SoftView admits the allegations in paragraph 31.

1 32. SoftView admits that a valid and justiciable controversy has arisen and exists
2 between HTC and SoftView relating to the validity of the '353 patent. SoftView admits that
3 HTC purports to desire a judicial determination and declaration of the respective rights and
4 duties of the parties herein. To the extent not expressly admitted here, SoftView denies the
5 allegations in paragraph 32 and denies that HTC is entitled to any of the relief that it seeks.

6 **FOURTH CAUSE OF ACTION**

7 **(DECLARATORY JUDGMENT OF INVALIDITY ('926 PATENT))**

8 33. In response to the allegations in paragraph 33, SoftView incorporates its
9 responses to paragraphs 1-32 set forth above as if fully set forth herein.

10 34. SoftView admits that HTC purports to believe that the claims of the '926 patent
11 are invalid. To the extent not expressly admitted here, SoftView denies the allegations in
12 paragraph 34.

13 35. SoftView admits the allegations in paragraph 35.

14 36. SoftView admits that a valid and justiciable controversy has arisen and exists
15 between HTC and SoftView relating to the validity of the '926 patent. SoftView admits that
16 HTC purports to desire a judicial determination and declaration of the respective rights and
17 duties of the parties herein. To the extent not expressly admitted here, SoftView denies the
18 allegations in paragraph 36 and denies that HTC is entitled to any of the relief that it seeks.

19 **PRAYER FOR RELIEF**

20 37. In response to HTC's Prayer for Relief, SoftView denies that HTC is entitled to
21 any relief sought in paragraphs 1-6 of the Prayer.

22 **COUNTERCLAIMS**

23 38. SoftView incorporates its responses to paragraphs 1-37 set forth above as if fully
24 set forth herein.
25
26

1 39. This Court has subject matter jurisdiction over SoftView's Counterclaims
2 pursuant to 28 U.S.C. § 1338. This Court has personal jurisdiction over the HTC entities with
3 respect to SoftView's Counterclaims by virtue, *inter alia*, of HTC having submitted to the
4 jurisdiction of this Court by filing the Complaint.

5 **INFRINGEMENT OF U.S. PATENT NO. 7,461,353**

6 40. SoftView is informed and believes, and thereon alleges, that HTC, in violation of 35
7 U.S.C. § 271(a), has been infringing and currently infringes the '353 patent by, among other
8 things, making, using, offering to sell, and selling in this judicial district and elsewhere
9 throughout the United States, without authority or license from SoftView, infringing hardware
10 and software products, including at least devices sold under the trade names Aria, Desire, Dream,
11 Eris, EVO, Hero, Incredible, Inspire, G I, G2, Legend, Magic, MyTouch, Nexus, Tattoo,
12 Thunderbolt, Shift, and Wildfire (collectively, the "Accused Products").

13 41. SoftView is informed and believes, and thereon alleges, that HTC has
14 contributorily infringed and is currently contributorily infringing the '353 patent in violation of
15 35 U.S.C. § 271(c), by selling or offering for sale to third parties, in this judicial district and
16 elsewhere throughout the United States, without license or authority from SoftView, components
17 that embody a material part of the inventions described in the '353 patent, are known by HTC to
18 be especially made or especially adapted for use in the infringement of the '353 patent, and are
19 not staple articles or commodities suitable for substantial, non-infringing use, including the
20 Accused Products and their respective components. SoftView is informed and believes, and
21 thereon alleges, that these third parties have infringed and will infringe the '353 patent, in
22 violation of 35 U.S.C. § 271(a), by using infringing software and hardware products, including
23 some or all of the Accused Products and their respective components.

24 42. SoftView is informed and believes, and thereon alleges, that HTC has actively
25 induced and is currently inducing the infringement of the '353 patent in violation of 35 U.S.C.
26 § 271(b), by knowingly and intentionally encouraging or aiding third parties to use infringing

1 software and hardware products in this judicial district and elsewhere throughout the United
2 States, without license or authority from SoftView, including at least the Accused Products.
3 SoftView is informed and believes, and thereon alleges, that these third parties have infringed
4 and will infringe the '353 patent in violation of 35 U.S.C. § 271(a) by using infringing software
5 and hardware products, including some or all of the Accused Products.

6 43. SoftView is informed and believes, and thereon alleges, that HTC's infringement
7 of the '353 patent has been and continues to be willful.

8 44. Unless enjoined, HTC will continue to infringe the '353 patent.

9 45. As a direct and proximate result of HTC's conduct, SoftView has suffered and
10 will continue to suffer irreparable injury, for which it has no adequate remedy at law. SoftView
11 has also been damaged and, until an injunction issues, will continue to be damaged in an amount
12 yet to be determined.

13 **INFRINGEMENT OF U.S. PATENT NO. 7,831,926**

14 46. SoftView is informed and believes, and thereon alleges, that HTC, in violation of
15 35 U.S.C. § 271(a), has been infringing and currently infringes the '926 patent by, among other
16 things, making, using, offering to sell, and selling in this judicial district and elsewhere
17 throughout the United States, without authority or license from SoftView, infringing hardware
18 and software products, including at least the Accused Products.

19 47. SoftView is informed and believes, and thereon alleges, that HTC has
20 contributorily infringed and is currently contributorily infringing the '926 patent in violation of
21 35 U.S.C. § 271(c), by selling or offering for sale to third parties, in this judicial district and
22 elsewhere throughout the United States, without license or authority from SoftView, components
23 that embody a material part of the inventions described in the '926 patent, are known by HTC to
24 be especially made or especially adapted for use in the infringement of the '926 patent, and are
25 not staple articles or commodities suitable for substantial, non-infringing use, including the
26 Accused Products and their respective components. SoftView is informed and believes, and

thereon alleges, that these third parties have infringed and will infringe the '926 patent, in violation of 35 U.S.C. § 271(a), by using infringing software and hardware products, including some or all of the Accused Products and their respective components.

48. SoftView is informed and believes, and thereon alleges, that HTC has actively induced and is currently inducing the infringement of the '926 patent in violation of 35 U.S.C. § 271(b), by knowingly and intentionally encouraging or aiding third parties to use infringing software and hardware products in this judicial district and elsewhere throughout the United States, without license or authority from SoftView, including at least the Accused Products. SoftView is informed and believes, and thereon alleges, that these third parties have infringed and will infringe the '926 patent in violation of 35 U.S.C. § 271(a) by using infringing software and hardware products, including some or all of the Accused Products.

49. SoftView is informed and believes, and thereon alleges, that HTC's infringement of the '926 patent has been and continues to be willful.

50. Unless enjoined, HTC will continue to infringe the '926 patent.

51. As a direct and proximate result of HTC's conduct, SoftView has suffered and will continue to suffer irreparable injury, for which it has no adequate remedy at law. SoftView has also been damaged and, until an injunction issues, will continue to be damaged in an amount yet to be determined.

PRAYER FOR RELIEF

WHEREFORE, SoftView prays that the Court enter a judgment as follows:

- A. For a judicial determination that the '353 and '926 patents are valid and enforceable;
- B. For a judicial determination that HTC infringes the '353 and '926 patents;
- C. For a judicial determination that HTC's infringement of the '353 and '926 patents is willful;

1 D. For an order preliminarily and permanently enjoining HTC and its directors,
2 officers, employees, attorneys, agents, and all persons in active concert or participation with any
3 of the foregoing, from further acts of infringement of the '353 and '926 patents;

4 E. For damages resulting from HTC's infringement of the '353 and '926 patents and
5 the trebling of such damages because of the willful nature of HTC's infringement;

6 F. For an assessment of interest on damages;

7 G. For a declaration that this case is exceptional pursuant to 35 U.S.C. § 285 and an
8 award of attorney's fees and other costs in this action; and

9 H. For such other and further relief as this Court deems just and equitable.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff demands a trial by jury on all issues.

12 Respectfully submitted July 25, 2011.

13 FOSTER PEPPER PLLC

14 *s/ Tim J. Filer*

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Attorneys for Defendant SoftView LLC

DECLARATION OF SERVICE

The hereby certify that on July 25, 2011 I electronically filed the attached document with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following parties who have appeared in this action as of today's date:

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I also sent a copy of the attached document via U.S. Mail to the following:

NONE REQUIRED

I DECLARE under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED July 25, 2011.

FOSTER PEPPER PLLC

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